

## **Standard Terms of Business**

These are DBL's standard terms of business which are incorporated into this Agreement and any other agreement for DBL to provide Services which will override any other express or implied terms and conditions including but not limited to your standard terms and conditions.

### **1. Interpretation**

- 1.1 "**Agreement**" means any agreement to which these terms & conditions are incorporated including (but not limited to) the agreement effected by this engagement letter.
- 1.2 "**DBL**" means Databax Limited with registered office at c/o Langtons, The Plaza, 100 Old Hall Street, Liverpool L3 9QJ (Registered in England No. 04085248).
- 1.3 "**Package**" means a collection of Services.
- 1.4 "**Prices**" means the prices payable by you for the Services as set out in section 3 of the proposal document.
- 1.5 "**Services**" means those of the services listed in section 2 of the proposal document to be provided by DBL.
- 1.6 "**Start Date**" means in respect of any of the Services the date on which DBL actually starts providing those Services.
- 1.7 "**you/your**" means the party who purchases Services from DBL and your details are set out in Schedule 5.
- 1.8 Reference to a paragraph number shall be a reference to a paragraph in this Schedule and reference to a Schedule shall be a reference to a Schedule to this engagement letter.
- 1.9 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.10 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.11 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

### **2. Duration of the Agreement**

- 2.1 This Agreement shall continue in respect of all the agreed Services unless and until terminated by either party giving to the other at least 90 days' prior written notice expiring on the contractual end date for those Services provided that DBL may agree at its entire discretion to a shorter notice period being given by you.
- 2.2 For the avoidance of doubt, the Services and/or any Package are being provided for use in the course of conducting a business and accordingly, no statutory consumer protection shall be afforded by DBL to you.
- 2.3 DBL reserves the right to cancel and/or suspend the Services at any time without notice if you are in breach of any of the terms of this Agreement (including but not limited to the failure to pay any monies when due).

### **3. Refunds**

- 3.1 In the event that DBL cancels Services for reasons other than your breach of contract, you will be entitled to a pro rata refund based upon the remaining period of your current contract term for which you have already paid in full.

### **4. Payment**

- 4.1 All Services and Packages must be paid for monthly in advance by direct debit payments instigated by DBL (which you hereby authorise DBL to take in accordance with the agreed payment terms for the Services), or by such other means as may be agreed between us in writing, on the last day of each month in accordance with the specific provisions of that Service or Package.
- 4.2 DBL reserves the right to change the Prices and/or nature of its Services by giving you written notice of those changes. Notice of changes to Prices and/or Services will be given by e-mail to the e-mail address held in your DBL Account.

- 4.3 All payments must be made in UK pounds sterling, together with (where you are located within the European Union) value added tax thereon and on receipt thereof, we will provide you with a VAT invoice.

- 4.4 All invoices will be sent directly to you via email prior to the due date for payment.

- 4.5 If you fail to make any payment that is due, DBL reserves the right to interrupt, suspend or cancel the Services to you. Such interruption, suspension or cancellation does not relieve you from paying all contractually obligated amounts due to DBL.

### **5. Appropriate Service use**

- 5.1 DBL reserves the right to refuse Service and/or access to its servers and/or any user or potential user, in the event of any illegal, unlawful, abusive or inappropriate use or intent.
- 5.2 DBL does not allow any content which is illegal, unlawful, abusive or inappropriate to be stored on its servers, and DBL reserves the right to remove content from its servers or suspend the Services immediately where it reasonably suspects any such abusive.
- 5.3 DBL shall notify you if it becomes aware of any allegation that you breach the Acceptable Use Policy.
- 5.4 Refusal of Services based on the content being contrary to our Acceptable Use Policy is entirely at the discretion of DBL.
- 5.5 DBL reserves the right to move your data to a different server with no prior notice.
- 5.6 You shall indemnify DBL against all damages, losses and expenses arising as a result of any action or claim that the data, content and/or any other material breaches the Acceptable Use Policy.
- 5.7 In the event that DBL removes data or content from its servers and/or suspends Services pursuant to clause 7.2, and later reinstates such content and/or resumes Services, you shall indemnify DBL against all damages, losses and expenses arising as a result of any action or claim that such content and/or data and/or the Services (that) your site breaches DBL's Acceptable Use Policy.

### **6. Scheduled maintenance**

- 6.1 To guarantee optimum performance on its servers, it is necessary for DBL to perform routine maintenance from time to time. Such maintenance may occasionally require taking Services off-line, typically performed during off-peak hours. DBL will give you advance notice of maintenance requiring the Services to be taken off-line whenever possible by publishing notice on the DBL website.

### **7. Support**

- 7.1 DBL will endeavour to provide a continuous high quality support service in accordance with the service level terms set out in Schedule 3.
- 7.2 DBL may need to suspend our support services for short scheduled periods to carry out maintenance or repair. Information concerning scheduled downtime is available on the DBL's website, as are details of any interruptions to the Services.

### **8. Usage**

- 8.1 If you exceed the agreed usage limit in any month, then you will be notified of such excess and any additional usage will only be permitted when we have your written agreement to pay for the additional usage in accordance with our Prices.

### **9. Data**

- 9.1 All data created or stored by you within DBL's applications and servers are your property. DBL shall only allow access to such data by authorised DBL personnel. DBL makes no claim of ownership of any web server content, email content, or any other type of data contained within the account holder's server space or within applications on DBL's servers.
- 9.2 In the event of loss of or damage to your data relating to a failure in DBL's systems or servers, DBL will make reasonable commercial efforts to assist you in the restoration of your data, however

you accept full responsibility for maintaining adequate backup copies of all your data.

- 9.3 You shall indemnify DBL against all damages, losses and expenses arising as a result of any action or claim that the content or data on your site or content or data accessed from or published as part of the Services infringes the intellectual property rights of a third party.

### **10. Passwords**

- 10.1 It is your responsibility to keep your password(s) and encryption keys confidential, and to change the password on a regular basis. DBL is not responsible for any data losses or security issues due to stolen passwords or any passwords that you have intentionally or accidentally disclosed to any third party. DBL recommends that you use complex passwords that contain at least a combination of numbers and symbols in order to prevent unauthorized users from guessing commonly-used choices (i.e. "12345", "password", etc.).
- 10.2 You accept full responsibility for any purchases or modifications made within your control panel by you or by third parties using your account password.

### **11. Your personal details**

- 11.1 You warrant and represent to us that the contact information, and other details that you have provided to us (and as set out in Schedule 5), are true and correct in every detail and that you undertake to keep this information up to date at all times. You agree that we may suspend access to your account and the Services if we reasonably believe that any of the information you have supplied is inaccurate in any material particular.
- 11.2 DBL will not provide any of your personal information to other companies or individuals without your permission unless required to do so by law. However, DBL may need to provide this information to third parties that assist DBL in delivering specific Services to you (e.g. customer support and maintenance).

### **12. DBL Disclaimers and Warranties**

- 12.1 So far as permitted by law and particularly in respect of non-consumers, all implied conditions, warranties and terms (whether express or implied by statute, common law, custom or otherwise) including, but not limited to, those relating to the exercise of reasonable care and skill, fitness for purpose and satisfactory quality (where applicable) are hereby excluded in relation to each of the Services to be provided hereunder to the fullest extent permitted by law.
- 12.2 For the avoidance of doubt, any use of the Services and/or any Package in the course of conducting business shall give rise to you being a non-consumer and the provisions of this Agreement affecting the statutory consumer protection you or they would otherwise be afforded as a consumer shall not apply.

### **13. Liability**

- 13.1 DBL shall not be liable for any loss or damage of whatsoever nature suffered by you arising out of or in connection with any breach of this Agreement by you or any act, misrepresentation, error or omission made by you or on your behalf.
- 13.2 DBL will not be liable for any indirect loss, consequential loss, loss of profit, revenue, data or goodwill howsoever arising suffered by you or for any wasted management time or failure to make anticipated savings or liability you incur to any third party arising in any way in connection with this Agreement or otherwise whether or not such loss has been discussed by the parties pre-contract or for any account for profit, costs or expenses arising from such damage or loss.
- 13.3 No matter how many claims are made and whatever the basis of such claims, DBL's maximum aggregate liability to you under or in connection with this Agreement in respect of any direct loss (or any other loss to the extent that such loss is not excluded by other provisions in this Agreement) whether such claim arises in contract

or in tort shall not exceed a sum equal to the amount paid by you for the Services in relation to which your claim arises during the 12 month period prior to such claim.

13.4 None of the clauses herein shall apply so as to restrict liability for death or personal injury resulting from the negligence of DBL, its employees or its sub-contractors.

13.5 DBL shall not be liable for any interruptions to the Services or outages arising directly or indirectly from:-

13.5.1 interruptions to the flow of data to or from the internet;

13.5.2 changes, updates or repairs to the network or software which it uses as a platform to provide the Services;

13.5.3 the effects of the failure or interruption of Services provided by third parties;

13.5.4 factors outside of DBL's reasonable control;

13.5.5 your actions or omissions (including, without limitation, breach of your obligations set out in the Agreement) or those of any third parties;

13.5.6 problems with your equipment and/or third party equipment; or

13.5.7 interruptions to the Services requested by you.

#### 14. Force Majeure

14.1 DBL shall not be responsible for any failure to provide any Services or perform any obligation under the Agreement because of any act of God, strike, lock-outs or other industrial disputes (whether involving the workforce of DBL or any other party) or compliance with any law of governmental or any other order, rule, regulation or direction, accident, fire, flood, storm or default of suppliers, work stoppage, war, riot or civil commotion, equipment or facilities shortages which are being experienced by providers of telecommunication services generally, or other similar force beyond its reasonable control.

#### 15. Variations

15.1 We may update or amend these terms of business, the terms of our service levels, any technical specification relating to the Services and/or Package or our Acceptable Use Policy from time to time to comply with law or to meet our changing business requirements.

15.2 We will give you prior notice of any changes to the Agreement and you can choose to cancel the Services without penalty before the new terms affect you. Display of the modified terms and conditions shall be deemed to be notice to you. You also agree to review the terms and conditions regularly to ensure you are aware of any modifications.

#### 16. Licence

16.1 The Licence is granted to you solely for the purpose of utilising the Services.

16.2 The Licence terminates on the termination of this agreement.

16.3 You acknowledge that the grant of the Licence gives or confers no rights of ownership in relation to any aspect of the Software.

#### 17. Term and Termination

17.1 Contracts will be renewed at the end of each contractual period (start date) for a further year unless 3 months' notice is given in writing prior to the end of the initial 36 month contract.

17.2 Either party (or in relation to clauses 17.2.2, 17.2.3 and 17.2.4, solely the DBL) may by written notice at any time (in addition to any other rights) either (i) terminate this agreement; or (ii) suspend its performance of all or any of its obligations under it immediately and for so long as the circumstances described in the sub clauses of this clause 17.3 set out below persist in respect of the other party ("the defaulting party"), and in each case without liability for compensation or damages if:

17.2.1 The defaulting party fails to comply with any of its obligations under this agreement or any agreement supplemental to it and the failure (if capable of being remedied) remains unremedied for 7 days after being

called to the defaulting party's attention by written notice from the other party;

17.2.2 You fail to make any payment when and as due to the Company;

17.2.3 You are guilty of any act which brings DBL into disrepute or which in DBL's reasonable opinion is prejudicial to its interests;

17.2.4 You purport to assign the burden or benefits or charge the benefits of this agreement;

17.2.5 The defaulting party dies, becomes bankrupt, has a receiving order made against him, makes any arrangement with his creditors generally or takes or suffers any similar action as a result of debt;

17.2.6 The defaulting party convenes a meeting of its creditors or suffers a petition to be presented or a meeting to be convened or other action to be taken with a view to its liquidation except (with the written approval of the other party) for the purposes of and followed by amalgamation or reconstruction;

17.2.7 A receiver, administrator or administrative receiver is appointed of any of defaulting party's property;

17.2.8 Any execution is levied upon the defaulting party's goods;

17.2.9 The defaulting party makes or seeks to make any composition or arrangements with its creditors;

17.3 If any party takes or threatens any action including, but without limitation, the commencement of legal proceedings to enforce or foreclose any lien or mortgage over or in respect of any property of the defaulting party.

17.4 Either party may following the expiry of the Minimum Term terminate the agreement on any anniversary of the Start Date upon giving the other party at least 90 days written notice.

17.5 If DBL ceases to provide or deal in the Services, this agreement shall terminate immediately unless the business or any part of it (being a part concerned in the provision of the Services or any class of them) has been transferred to any other person and the rights and obligations of DBL under this agreement have been assigned to that other person after one month's notice of such assignment in writing has been given by DBL to you.

#### 18. Consequences of Termination

18.1 Following the termination of this agreement for whatever reason, you agree to:

18.2 immediately cease to use any of the Software; and

18.3 destroy the Software together with all copies in any form, including copies on the Customer's hard and backup discs; and

18.4 remove all such material, which is in computer readable form from all computers and storage systems on which it is recorded; and

18.5 supply to DBL such evidence as the Company reasonably requires to be satisfied that this clause had been complied with; and

18.6 pay to DBL the balance of the Service Charges in respect of the Minimum Term (unless such termination was by you the Customer pursuant to clauses 17.2, 17.3 or 17.6).

18.7 The termination of this agreement shall not affect:

18.8 Such of its provisions as are expressed to operate or have effect afterwards; or

18.9 Any right of action already accrued to either party in respect of any breach of this agreement by the other party.

18.10 Any continued supply of the Services by the DBL shall not be construed as a continuation of this agreement.

#### 19. General

19.1 The failure of DBL to require your performance of any provision shall not affect the full right to require such performance at any time thereafter; nor shall the waiver by DBL of a breach of any provision hereof be taken or held to be a waiver of the provision itself.

19.2 The provisions, terms, conditions representations, warranties, covenants, and obligations contained

in or imposed by this Agreement which by their performance after the termination of this Agreement, shall be and remain enforceable notwithstanding termination of the Agreement for any reason.

19.3 You agree that any notice or communications required or permitted to be delivered under this Agreement by DBL to you shall be deemed to have been given if delivered by e-mail, in accordance with the contact information set out in Schedule 5 or by first class recorded delivery post to your registered office.

19.4 This Agreement shall be governed by English law and subject to the exclusive jurisdiction of the English Courts.

19.5 This Agreement constitutes the entire agreement between the parties and agreements are representations or warranties, express or implied, statutory or otherwise and no agreements collateral here to than as expressly set or referred to herein. This Agreement supersedes any prior agreements, representations, statements, negotiations, understandings, proposals or undertakings, oral or written, with respect to the subject matter expressly set forth herein.

19.6 Nothing in this Agreement shall be construed as creating an agency relationship, partnership or joint venture between the parties.

19.7 This Agreement does not provide and shall not be construed to provide any third parties, with any remedy, claim, and cause of action or privilege.

19.8 In the event that any provision of this Agreement shall be unenforceable or invalid under any applicable law or be so held by applicable court decision, such unenforceability or invalidity shall not render this Agreement unenforceable or invalid as a whole. DBL will amend or replace such provision with one that is valid and enforceable and which achieves, to the extent possible, the original objectives and intent of DBL as reflected in the original provision.

